

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 548**

FINAL READING

Introduced by Jensen, 20

Read first time January 18, 2005

Committee: Health and Human Services

A BILL

- 1     FOR AN ACT relating to public entities; to adopt the Public
- 2             Entities Mandated Project Charges Act; and to provide
- 3             severability.
- 4     Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 17 of this act shall be known  
2 and may be cited as the Public Entities Mandated Project Charges  
3 Act.

4           Sec. 2. For purposes of the Public Entities Mandated  
5 Project Charges Act, the definitions found in sections 3 to 11 of  
6 this act apply.

7           Sec. 3. Financing costs means:

8           (1) Interest, including, but not limited to, capitalized  
9 interest, and redemption premiums that are payable on mandated  
10 project bonds;

11           (2) The cost of retiring or refunding a public entity's  
12 existing debt in connection with the issuance of mandated project  
13 bonds, but only to the extent the debt was issued for the purposes  
14 of financing mandated project costs;

15           (3) Any cost related to the issuing and servicing of  
16 mandated project bonds, including, but not limited to, servicing  
17 fees, trustee fees, legal fees, administrative fees, bond counsel  
18 fees, bond placement or underwriting fees, remarketing fees, broker  
19 dealer fees, payments under an interest rate swap agreement,  
20 financial advisor fees, accounting or engineering report fees, and  
21 rating agency fees;

22           (4) Any expense associated with any bond insurance  
23 policy, credit enhancement, or other financial arrangement entered  
24 into in connection with the issuance of mandated project bonds; and

25           (5) The funding of one or more reserve accounts related

1 to mandated project bonds.

2           Sec. 4. Mandate means a requirement imposed by a statute  
3 of the United States or the State of Nebraska, a rule, a  
4 regulation, an administrative or a judicial order, a licensing  
5 requirement or condition, any agreement with or requirement of  
6 a regional transmission organization, or any consent order or  
7 agreement between the United States or the State of Nebraska, or  
8 any agency thereof, and a public entity.

9           Sec. 5. Mandated project means the construction,  
10 retrofitting, rebuilding, acquisition, or installation of any  
11 equipment, device, structure, improvement, process, facility,  
12 technology, or other property owned, licensed, or controlled by  
13 a public entity or operated for the benefit of a public entity  
14 through a power participation or purchase agreement, either within  
15 or outside the State of Nebraska, and used in connection with a  
16 new or existing facility related to electrical power generation,  
17 transmission, or distribution, which construction, retrofitting,  
18 rebuilding, acquisition, or installation is undertaken to satisfy  
19 a mandate, including, but not limited to, any equipment, device,  
20 structure, improvement, process, facility, technology, or other  
21 property related to environmental pollution control, safety, or  
22 useful life extension of an existing plant or facility.

23           Sec. 6. Mandated project bonds means bonds, notes, or  
24 other evidences of indebtedness that are issued by a public entity,  
25 the proceeds of which are used directly or indirectly to pay or

1 reimburse mandated project costs and financing costs and which  
2 bonds are secured by and payable from mandated project charges.

3       Sec. 7. Mandated project charge means a charge paid by  
4 customers of a public entity to pay or reimburse the public entity  
5 for mandated project costs, including any adjustment of the charge  
6 pursuant to subdivision (1)(d) of section 12 of this act, or  
7 financing costs.

8       Sec. 8. Mandated project costs means capital costs  
9 incurred or to be incurred by a public entity with respect to a  
10 mandated project, including the payment of debt service on mandated  
11 project bonds, either directly or through a power participation or  
12 purchase agreement, and any related operating expenses.

13       Sec. 9. Public entity means a municipality, a registered  
14 group of municipalities, a public power district, a public power  
15 and irrigation district, an electric cooperative, an electric  
16 membership association, a joint entity formed under the Interlocal  
17 Cooperation Act, a joint public agency formed under the Joint  
18 Public Agency Act, an agency formed under the Municipal Cooperative  
19 Financing Act, or any other governmental entity.

20       Sec. 10. Related operating expenses means any necessary  
21 operating expenses of a project or system required to be paid from  
22 the mandated project charge by an order of a court pursuant to 11  
23 U.S.C. 928(b), as such section existed on January 1, 2006.

24       Sec. 11. Special revenue has the definition found in 11  
25 U.S.C. 902(2) as such section existed on January 1, 2006.

1           Sec. 12. (1) A public entity may elect to pay or  
2 reimburse mandated project costs and financing costs through the  
3 use of mandated project charges. Public entities are hereby  
4 authorized to impose and collect mandated project charges as  
5 provided in the Public Entities Mandated Project Charges Act.  
6 The election to use mandated project charges shall be made and  
7 evidenced by the adoption of a resolution of the governing body  
8 of the public entity authorizing the mandated project as set forth  
9 in the public entity's capital budget. The authorizing resolution  
10 shall include the following:

11           (a) A statement that the project is a mandated project  
12 and a description of the mandate that will be addressed by the  
13 mandated project;

14           (b) A statement that the public entity is electing to pay  
15 or reimburse the mandated project costs and financing costs with  
16 mandated project charges in accordance with the Public Entities  
17 Mandated Project Charges Act;

18           (c) An authorization to add a separate charge to each  
19 customer's electric service bill, representing such customer's  
20 portion of the mandated project charge;

21           (d) A description of the financial calculation, formula,  
22 or other method that the public entity utilizes to determine the  
23 mandated project charges that customers will be required to pay  
24 for the mandated project, including a periodic adjustment method,  
25 applied at least annually, that shall be utilized by the public

1 entity to correct for any overcollection or undercollection of  
2 such mandated project charges or any other adjustment necessary  
3 to assure payment of debt service on mandated project bonds,  
4 including, but not limited to, the adjustment of the mandated  
5 project charges to pay related operating expenses and any  
6 debt service coverage requirement. The financial calculation,  
7 formula, or other method, including the periodic adjustment  
8 method, established in the authorizing resolution pursuant to this  
9 subdivision, and the allocation of mandated project charges to and  
10 among its customers, shall be decided solely by the governing body  
11 of the public entity and shall be final and conclusive, subject  
12 to the procedures set forth in subsection (4) of this section.  
13 In no event shall the periodic adjustment method established in  
14 the authorizing resolution pursuant to this subdivision be applied  
15 less frequently than required by the governing documents of any  
16 mandated project bonds issued to finance the mandated project. Once  
17 the financial calculation, formula, or other method for determining  
18 the mandated project charges, and the periodic adjustment method,  
19 have been established in the authorizing resolution and have become  
20 final and conclusive as provided in the act, they shall not be  
21 changed; and

22 (e) If mandated project bonds are to be issued for the  
23 mandated project, a requirement that the public entity shall enter  
24 into a servicing agreement for the bonds with a trustee selected by  
25 the governing body and the public entity shall act as a servicing

1 agent for purposes of collecting the mandated project charges.  
2 Money collected by the public entity, acting as a servicing agent  
3 on behalf of a trustee, shall be held for the exclusive benefit of  
4 holders of mandated project bonds.

5 (2) The determination of the governing body that a  
6 project is a mandated project shall be final and conclusive,  
7 and any mandated project bonds issued and mandated project  
8 charges imposed relating to such determination shall be valid and  
9 enforceable in accordance with their terms. The public entity shall  
10 require, in its authorizing resolution with respect to mandated  
11 project charges, that so long as any customer obtains electric  
12 distribution service from the public entity, the customer shall  
13 pay the mandated project charge to the public entity regardless  
14 of whether or not the customer obtains electric energy service  
15 from the public entity or another energy supplier other than the  
16 public entity. All provisions of the authorizing resolution adopted  
17 pursuant to this section shall be binding on the public entity and  
18 on any successor or assignee of the public entity.

19 (3) The timely and complete payment of all mandated  
20 project charges shall be a condition of receiving electric service  
21 for customers of the public entity, and the public entity shall  
22 be authorized to use its established collection policies and all  
23 rights and remedies provided by the law to enforce payment and  
24 collection of the mandated project charges. In no event shall any  
25 customer of a public entity be entitled or authorized to withhold

1 payment, in whole or in part, of any mandated project charges for  
2 any reason.

3 (4) The secretary or other duly designated officer of  
4 the governing body of the public entity shall prepare and maintain  
5 a complete record of all documents submitted to and all oral and  
6 written comments made to the governing body in connection with  
7 an authorizing resolution adopted pursuant to this section. Within  
8 ten days after adoption of an authorizing resolution, an aggrieved  
9 party may file a petition for judicial review in the Supreme Court  
10 and pay the docket fee established in section 33-103. The petition  
11 shall name the public entity as the respondent and shall be served  
12 upon the public entity in the manner provided by law for service  
13 of process. Within ten business days after service of the petition  
14 for judicial review upon the public entity, the secretary or other  
15 duly designated officer of the public entity shall prepare and  
16 file with the Clerk of the Supreme Court, at the public entity's  
17 expense, the record of all documents submitted to and all oral and  
18 written comments made to the governing body in connection with the  
19 authorizing resolution. Judicial review pursuant to this subsection  
20 shall be based solely upon the record submitted by the public  
21 entity, and briefs to the court shall be limited to determining  
22 whether the financial calculation, formula, or other method adopted  
23 by the public entity pursuant to subdivision (1)(d) of this section  
24 is a fair, reasonable, and nondiscriminatory allocation to the  
25 public entity's customers of the mandated project charges needed



1 to pay for the mandated project. Because the process of judicial  
2 review may delay the issuance of mandated project bonds to the  
3 financial detriment of customers of the public entity, the Supreme  
4 Court shall proceed to hear and determine a petition for judicial  
5 review under this section as expeditiously as practicable and shall  
6 give the matter precedence over other civil matters on the docket.  
7 The authorizing resolution shall become final and conclusive if  
8 there is no petition for judicial review filed within the time  
9 set forth in this subsection or upon the effective date of the  
10 court's decision in favor of the public entity. If the court rules  
11 against the public entity on a petition for judicial review under  
12 this subsection, the public entity's authorizing resolution shall  
13 be void and of no further force or effect.

14 For purposes of this subsection, aggrieved party means a  
15 retail customer of the public entity that receives electric service  
16 pursuant to a published rate schedule.

17 Sec. 13. (1) A public entity has the authority to issue  
18 mandated project bonds, including refunding bonds, in one or more  
19 series. Mandated project charges to which the public entity may  
20 at any time be entitled shall be pledged, without any necessity  
21 for specific authorization of the pledge by the public entity, to  
22 the mandated project bonds. Each such series of mandated project  
23 bonds shall be secured by and payable from a first lien on mandated  
24 project charges pledged for such purpose. Any separate consensual  
25 lien or security interest shall be created in accordance with and

1 governed by the Nebraska Governmental Unit Security Interest Act.  
2 The proceeds of such bonds shall be applied exclusively to payment  
3 of mandated project costs and financing costs and, in the case  
4 of proceeds of refunding bonds, the retirement or defeasance of  
5 mandated project bonds.

6 (2) The public entity and any successor or assignee of  
7 the public entity shall be obligated to impose and collect the  
8 mandated project charges in amounts sufficient to pay debt service  
9 on the mandated project bonds as due. The pledge of mandated  
10 project charges shall be irrevocable, and the state, the public  
11 entity, or any successor or assignee of the public entity may  
12 not reduce, impair, or otherwise adjust mandated project charges,  
13 except that the public entity and any successor or assignee thereof  
14 shall implement the periodic adjustment method established by the  
15 authorizing resolution pursuant to subdivision (1)(d) of section  
16 12 of this act. Revenue from mandated project charges shall be  
17 deemed special revenue and shall not constitute revenue of the  
18 public entity for purposes of any pledge of revenue, receipts, or  
19 other income that such public entity has made or will make for the  
20 security of debt other than the mandated project bonds to which the  
21 revenue from the mandated project charges is expressly pledged.

22 Sec. 14. Mandated project charges shall be applied  
23 exclusively for the purpose of paying mandated project costs,  
24 including any adjustments of such charges pursuant to subdivision  
25 (1)(d) of section 12 of this act, and financing costs.

1           Sec. 15. A public entity undertaking a mandated project  
2 is not required to pay or reimburse the costs of the mandated  
3 project with mandated project charges, and such public entity is  
4 not required to issue mandated project bonds. The use of mandated  
5 project charges and issuance of mandated project bonds are elective  
6 actions wholly within the discretion of the public entity.

7           Sec. 16. A public entity collecting mandated project  
8 charges shall annually provide its customers with a concise  
9 explanation of mandated project charges billed to customers. Such  
10 explanation may be by billing insert, web site information, or  
11 other appropriate means.

12           Sec. 17. The Public Entities Mandated Project Charges  
13 Act and all grants of power and authority in the act shall be  
14 liberally construed to effectuate their purpose, and all incidental  
15 powers necessary to carry into effect the provisions of the act are  
16 expressly granted to and conferred upon public entities.

17           Sec. 18. If any section in this act or any part of any  
18 section is declared invalid or unconstitutional, the declaration  
19 shall not affect the validity or constitutionality of the remaining  
20 portions.